



Memorandum

TO: HONORABLE MAYOR AND
CITY COUNCIL

FROM: Alex Gurza

SUBJECT: SEE BELOW

DATE: June 10, 2010

Approved

Date

6/10/10

SUBJECT: APPROVAL OF IMPLEMENTATION OF TERMS CONTAINED IN THE CITY'S LAST, BEST AND FINAL OFFER TO THE OPERATING ENGINEERS, LOCAL NO. 3, (OE#3)

COUNCIL DISTRICT: N/A
SNI AREA: N/A

RECOMMENDATION

Adoption of a resolution approving the implementation of the terms of the City's Last, Best and Final Offer for employees represented by the Operating Engineers, Local No. 3 (OE#3), effective June 27, 2010.

OUTCOME

Adoption of the resolution and authorization to implement the terms contained in the City's Last, Best and Final Offer for employees represented by OE#3, effective June 27, 2010.
Implementation of terms does not result in implementation of a Memorandum of Agreement (MOA).

BACKGROUND

In November 2009, the City Council in open session approved a goal of reducing the total ongoing employee compensation by 5%. In March 2010, the City Council approved the Mayor's Budget Message which expanded the goal to include an additional 5% in personnel cost savings, including ongoing or one-time savings. As a result, the goal was to achieve a total compensation reduction of 10%. "Total compensation" is the total cost to the City of pay and benefits, including base pay, retirement contributions, health insurance and other benefits. Total compensation is calculated using budgeted salary and fringe benefit costs for the bargaining unit. It does not include overtime that an individual employee may earn.

The City of San Jose had a labor contract with the Operating Engineers, Local No. 3 (OE#3), which expired on April 17, 2009. In June of 2009, terms in a Last, Best and Final Offer made to OE#3 were approved by the City Council for Fiscal Year 2009-2010. OE#3 currently represents

June 10, 2010

Subject: Approval of Implementation of Last, Best and Final Offer for OE#3

Page 2 of 6

approximately 800 full time budgeted positions. This unit includes employees such as Maintenance Worker I/II, Parking and Traffic Control Officer, Maintenance Assistant, Groundswoker and Plant Operator.

OE#3 was first contacted to begin negotiations in January 2010 and negotiations commenced in April 2010. The City and OE#3 have met approximately six (6) times. The parties reached impasse on May 18, 2010, and began the impasse procedures under Employee-Employer Relations Resolution No. 39367, which is engaging in mediation. On June 4, 2010 and June 9, 2010, the parties engaged in the mediation process. Unfortunately, the parties were unable to reach agreement.

The City provided OE#3 with its Last, Best and Final Offer on June 9, 2010, which is attached.

Pursuant to the Meyers-Milius-Brown Act under California Government Code Section 3505.4, if after meeting and conferring in good faith, an impasse has been reached between the public agency and the recognized employee organization, and impasse procedures, where applicable, have been exhausted, a public agency that is not required to proceed to interest arbitration may implement its last, best and final offer, but shall not implement a memorandum of understanding.

OE#3 has been notified that this item was being placed on the Council Agenda for implementation of the terms contained in the City's Last, Best and Final Offer for employees represented by OE#3.

ANALYSIS

The following is a summary of the terms contained in the City's Last, Best and Final Offer that would be implemented for employees represented by OE#3:

| | |
|---|--|
| Wages | Reduce current base pay by approximately 3.90% effective June 27, 2010. This will result in both the top and bottom step of the pay range being reduced by approximately 3.90%. |
| Freezing of Step/Merit Increases | Each year, employees who are not already at top step are eligible to receive a 5.00% step increase during each fiscal year until the employee reaches top step. Effective June 27, 2010, all OE#3 represented employees will have step and merit increases frozen for 26 pay periods. After 26 pay periods, employees represented by OE#3 will become eligible for step increases upon completion of an additional 2080 seniority hours after the date they did not receive a step increase for which they were previously eligible. |
| Healthcare Cost Sharing | Currently, the City pays ninety (90%) of the full premium cost of the lowest cost plan for employee or for employee and dependent coverage, and the employee pays ten (10%) of the premium for the lowest priced plan for employee or employee and dependent coverage. |

June 10, 2010

Subject: Approval of Implementation of Last, Best and Final Offer for OE#3

Page 3 of 6

Effective June 27, 2010, the City will pay eighty five percent (85%) of the full premium cost of the lowest cost plan for employee or for employee and dependent coverage, and the employee will pay fifteen (15%) of the premium for the lowest priced plan for employee or employee and dependent coverage.

**Healthcare
HMO Plan Design**

The current HMO Plan Design provides for \$10 office visit co-pay, \$5 generic and \$10 brand name prescription co-pays, and a \$50 emergency room co-pay.

Effective July 1, 2010, co-pays for all available HMO plans shall be as follows:

- a. \$25 office visit co-pay
- b. \$10 generic/\$25 brand name prescription co-pay
- c. \$100 emergency room co-pay
- d. \$100 inpatient/outpatient procedure co-pay

**Healthcare
Dual Coverage**

Effective July 1, 2010, employees may no longer be simultaneously covered by City-provided medical and/or dental benefits as a City employee and as a dependent of another City employee or retiree.

**Healthcare
Payment-In-Lieu**

Currently, employees who have other health and/or dental coverage are eligible for a health-in-lieu and/or dental-in-lieu amount of 50% of the City's premium. This results in a formula that increases as the City's costs towards healthcare increases. The current in-lieu amounts are as follows:

| | <u>Health In-Lieu</u> | <u>Dental In-Lieu</u> |
|--------------------------------------|-----------------------|-----------------------|
| If eligible for family coverage: | 250.31 | 24.44 |
| If NOT eligible for family coverage: | 100.54 | 24.44 |

Effective June 27, 2010, employees who qualify for and participate in payment-in-lieu of health and/or dental insurance program will receive the following per pay period:

| | <u>Health In-Lieu</u> | <u>Dental In-Lieu</u> |
|--------------------------------------|-----------------------|-----------------------|
| If eligible for family coverage: | 221.84 | 19.95 |
| If NOT eligible for family coverage: | 89.09 | 19.95 |

A City employee who receives healthcare coverage as a dependent of another City employee or retiree shall be deemed NOT eligible for family coverage.

This changes the current formula from a percentage to a fixed dollar amount and will reduce the increases in the health in-lieu program in the future.

Overtime

Employees who work in excess of 40 hours per work week shall be compensated at the rate of time and one-half (1.5) the employee's hourly rate.

Disability Leave Supplement

Reduce maximum supplemental pay benefit from nine (9) calendar months (1560 hours) to six (6) calendar months (1040 hours).

Sick Leave Payout

Effective June 27, 2010, modify calculation of payout from a maximum of 75% of final hourly rate for accruals between 800 and 1200 hours, to a maximum of 60% of final hourly rate for accruals between 400 and 1200 hours for current employees. Distribution of payouts for employees who retire before June 27, 2010, shall be made no later than February 1, 2011.

For employees hired on or after June 27, 2010, modify calculation of payout to a maximum of 750 hours at 25% of final hourly rate. Employees who do not retire directly from active City service will no longer be eligible for this benefit.

For employees who separate from City service on or before June 26, 2010, and who have 15 years of service, they will receive a sick leave payout upon their retirement at the rate that was available at the time of their separation.

Employees would be eligible for only one sick leave payout while employed by the City, including breaks in employment.

Retirement Cost Mitigation

OE#3 shall commence meeting and conferring on retiree healthcare benefits for future employees, a medical reimbursement program for future retirees, and pension benefit/costs for current and future employees within 15 calendar days after the City provides notification to OE#3. Any changes to pension costs and benefits for current employees will be in accordance with applicable law.

Ineligibility if Offer and Decline of Modified Duty

Employees shall be voluntarily separated from City service if the City offers the employee temporary modified duty at identical or similar rate of pay, within the employee's medical limitations, and the employee refuses or fails to accept duty for which he or she is physically qualified. Any such separations will comply with the ADA.

Additional Retirement Contribution

Effective June 27, 2010 through June 28, 2011, employees will make an additional retirement contribution in the amount of 7.5% of pensionable compensation, and this amount will be applied to reduce the contributions

June 10, 2010

Subject: Approval of Implementation of Last, Best and Final Offer for OE#3

Page 5 of 6

that the City would otherwise be required to make during that time period for the pension unfunded liability. This additional employee retirement contribution would be in addition to the employee retirement contribution rates as approved by the Federated City Employees' Retirement System Board.

In the event the additional retirement contribution can not be implemented or is ceased for any reason, employees would instead have their base pay temporarily reduced by the equivalent amount of 5% in total compensation.

Part-time employees not in the City's retirement system will receive a 5.8% base pay reduction effective June 27, 2010 through June 28, 2011.

EVALUATION AND FOLLOW-UP

Other than adoptions of retirement contribution ordinances, staff does not anticipate any follow-up actions necessary at this time.

PUBLIC OUTREACH/INTEREST

- ☐ **Criteria 1:** Requires Council action on the use of public funds equal to \$1 million or greater.
(Required: Website Posting)
- ☒ **Criteria 2:** Adoption of a new or revised policy that may have implications for public health, safety, quality of life, or financial/economic vitality of the City. **(Required: E-mail and Website Posting)**
- ☐ **Criteria 3:** Consideration of proposed changes to service delivery, programs, staffing that may have impacts to community services and have been identified by staff, Council or a Community group that requires special outreach. **(Required: E-mail, Website Posting, Community Meetings, Notice in appropriate newspapers)-**

This item meets Criterion 2. This memorandum will be posted on the City's website for the June 15, 2010, Council Agenda.

COORDINATION

This memorandum was coordinated with the City Attorney's Office and the City Manager's Budget Office.

HONORABLE MAYOR AND CITY COUNCIL

June 10, 2010

Subject: Approval of Implementation of Last, Best and Final Offer for OE#3

Page 6 of 6

COST IMPLICATIONS

These terms meet the goal of a 10% total compensation reduction, including 5% in an ongoing total compensation reduction and another 5% in a one-time total compensation reduction. The implementation of these terms will reduce the total compensation for employees represented by the Operating Engineers, Local No. 3 (OE#3). The calculated savings to the City is approximately \$7.3 million in all funds and approximately \$2.8 million in the General Fund. These cost savings are projected based on the Fiscal Year 2010-2011 Base Budget. It should be noted, however, that the actual amount of General Fund and all funds savings would need to be adjusted to reflect the City Manager's 2010-2011 Proposed Operating Budget as amended/approved by the City Council, any associated impacts on revenue from lower overhead or other reimbursements, any adjustments to the cost-recovery fee program, and the actual healthcare costs for each individual employee based upon eligibility, elections for coverage and the associated funding source.



Alex Gurza

Director of Employee Relations

For questions please contact Alex Gurza, Director of Employee Relations, at (408) 535-8150.

Attachments

**2010 OE#3 NEGOTIATIONS
LAST, BEST AND FINAL OFFER**

TERM

Term: July 1, 2010 – June 30, 2011

PAY

See Attached (City Proposal #2)

FREEZING STEP INCREASES

See Attached (City Proposal #20)

HEALTH INSURANCE- COST SHARING

See Attached (City Proposal #5)

HEALTH INSURANCE- PLAN DESIGN

See Attached (City Proposal #6)

HEALTH INSURANCE- DUAL COVERAGE

See Attached (City Proposal #7)

HEALTH INSURANCE- HEALTH IN LIEU

See Attached (City Proposal #8)

ELIGIBILITY FOR OVERTIME

See Attached (City Proposal #10)

RETIREMENT COST MITIGATION

See Attached (Proposal #17 and 18)

SICK LEAVE PAYOFF

See Attached (City Proposal #15)

DISABILITY LEAVE SUPPLEMENT

See Attached (City Proposal #22 and 23)

ADDITIONAL 5% TOTAL COMPENSATION REDUCTION

See Attached (City Proposal #26)

2010 CITY OF SAN JOSE – OE#3 NEGOTIATIONS

CITY PROPOSAL #2- PAY

ARTICLE 5 WAGES AND SPECIAL PAY

5.1 Salary Range.

~~5.1.1 Wages 2006-2007. Effective December 3, 2006, all salary ranges for employees holding positions in classifications assigned to OE#3 shall be adjusted by 4.00%. The 2005-2006 salary ranges are listed in Exhibit I.~~

~~5.1.1.1 Effective December 22, 2006, full-time employees who were employed in OE#3 represented positions on April 15, 2006, and are still employed in OE#3 represented positions on December 3, 2006, shall receive a one time payment of \$1000.~~

~~5.1.1.2 Effective December 22, 2006, part-time employees who were employed in OE#3 represented positions on April 15, 2006, and are still employed in OE#3 represented positions on December 3, 2006, shall receive a one time payment of \$500.~~

~~5.1.2 Wages 2007-2008. Effective April 22, 2007, all salary ranges for employees holding positions in classifications assigned to OE#3 shall be adjusted by 3.00%. The 2006-2007 salary ranges are listed in Exhibit I.~~

~~5.1.2.1 Effective May 11, 2007, full-time employees who were employed in OE#3 represented positions on April 15, 2006, and are still employed in OE#3 represented positions on April 22, 2007, shall receive a one time payment of \$400.~~

~~5.1.2.2 Effective May 11, 2007, part-time employees who were employed in OE#3 represented positions on April 15, 2006, and are still employed in OE#3 represented positions on April 22, 2007, shall receive a one time payment of \$200.~~

~~5.1.3 Wages 2008-2009. Effective April 20, 2008, all salary ranges for employees holding positions in classifications assigned to OE#3 shall be adjusted by 3.75%. The 2007-2008 salary ranges are listed in Exhibit I.~~

5.1.1 Wages 2010-2011. Effective June 27, 2010, all salary ranges for employees holding positions in classifications assigned to OE#3 shall be decreased by approximately 3.9%. This will result in the top and bottom of the range of all classifications represented by OE#3 being 3.9% lower. All employees will receive a 3.9% base pay reduction.

2010 CITY OF SAN JOSE – OE#3 NEGOTIATIONS

CITY PROPOSAL #20- FREEZING STEP STRUCTURE

Effective June 27, 2010, all OE#3 represented employees will have step and merit increases frozen for 26 payperiods. After 26 payperiods, employees represented by OE#3 will become eligible for step increases upon completion of an additional 2080 seniority hours after the date they did not receive a step increase for which they were previously eligible.

CITY PROPOSAL #5- HEALTH INSURANCE COST SHARING FORMULA

Proposed Language

5.5 Health Insurance.

5.5.1 Effective the beginning of pay period fifteen of payroll calendar year 2009, the City shall pay ninety (90%) of the full premium cost of the lowest priced plan for employee or employee and dependent coverage, and the employee will pay ten percent (10%) of the premium for the lowest priced plan for the employee or for employee and dependent coverage. If an employee selects a plan other than the lowest priced plan, the employee shall pay the difference between the total cost of the selected plan and the City's contribution towards the lowest priced plan for employee or for employee and dependent coverage.

5.5.2 Effective June 27, 2010, the City shall pay eighty-five (85%) of the full premium cost of the lowest priced plan for employee or employee and dependent coverage, and the employee will pay fifteen percent (15%) of the premium for the lowest priced plan for the employee or for employee and dependent coverage. If an employee selects a plan other than the lowest priced plan, the employee shall pay the difference between the total cost of the selected plan and the City's contribution towards the lowest priced plan for employee or for employee and dependent coverage.

2010 CITY OF SAN JOSE – OE#3 NEGOTIATIONS

CITY PROPOSAL #6- HEALTH INSURANCE PLAN DESIGN

Proposed Language

5.5 Health Insurance.

5.5.2 Effective July 1, 2009, co-pays for all available HMO plans shall be as follows:

- a. Office Visit Co-pay shall be increased to \$10
- b. Prescription Co-pay shall be increased to \$5 for generic and \$10 for brand name. (The Blue Shield HMO will continue to include \$15 for non-formulary drug co-pay.)
- c. Emergency Room Co-pay shall be increased to \$50

5.5.3 Effective July 1, 2010, co-pays for all available HMO plans shall be as follows:

- a. Office Visit Co-pay shall be increased to \$25
- b. Prescription Co-pay shall be increased to \$10 for generic and \$25 for brand name.
- c. Emergency Room Co-pay shall be increased to \$100
- d. Inpatient/Outpatient procedure Co-pay shall be increased to \$100

2010 CITY OF SAN JOSE – OE#3 NEGOTIATIONS

CITY PROPOSAL #7- HEALTH INSURANCE DUAL COVERAGE

Proposed Language

5.5 Health Insurance.

5.5.5 An employee may not be simultaneously covered by City-provided medical benefits as a City employee, and as a dependent of another City employee or retiree.

5.6 Dental Insurance

5.6.3 An employee may not be simultaneously covered by City-provided dental benefits as a City employee, and as a dependent of another City employee or retiree.

CITY PROPOSAL #8- MODIFICATIONS TO HEALTH IN LIEU

Proposed Language

5.7 Payment-in-lieu of Health and/or Dental Insurance Program. The purpose of the payment-in-lieu of health and/or dental insurance program is to allow employees who have double health and/or dental insurance coverage to drop the City's insurance and receive a payment-in-lieu.

5.7.1 Employees who qualify for and participate in the payment-in-lieu of health and/or dental insurance program will receive 50% of the City's contribution toward the employee's health and/or dental insurance at the lowest cost single or family plan if the employee is eligible for family coverage. The City will retain the remaining 50% of that contribution.

5.7.2 Effective June 27, 2010, employees who qualify for and participate in the payment-in-lieu of health and/or dental insurance program will receive the following per payperiod:

| | Health In-Lieu | Dental In-Lieu |
|--------------------------------------|----------------|----------------|
| If eligible for family coverage: | \$221.84 | \$19.95 |
| If NOT eligible for family coverage: | \$89.09 | \$19.95 |

5.7.3 A City employee who receives healthcare coverage as a dependent of another City employee or retiree shall be deemed not eligible for family coverage.

5.7.24 The payment-in-lieu of health and/or dental insurance program is available to full-time employees who are not on a reduced workweek or unpaid leave and have alternate group health and/or dental coverage. To qualify, an employee must provide proof of alternate group coverage to Human Resources. Alternate coverage must be acceptable by the City.

5.7.3-5 Enrollment in the payment-in-lieu of health and/or dental insurance program can only be done during the first 30 days of employment, during the annual open enrollment period or within 30 days of a qualifying event (defined in the Human Resources Benefits Handbook as a change in marital, dependent or work status of the employee or the employee's spouse) occurring anytime during the year. Employees who miss the 30-day time limit after a qualifying event must wait until the next open enrollment period to enroll in the payment-in-lieu of insurance program. Enrollment in the payment-in-lieu of insurance program may be canceled by the employee only during the annual open enrollment period unless the employee loses alternate group coverage. Enrollment or cancellation during the open enrollment period will become effective the first pay period of the following calendar year.

5.7.4-6 Payments for the in-lieu insurance program will be discontinued if an employee becomes ineligible for the program. An employee's ineligible status would include but not be limited to the following situations, employment status changes from full to part time, employee is on an unpaid leave of absence, employee is on a reduced workweek, or employee loses or does not have alternate insurance coverage. An employee whose in-lieu payments are discontinued may enroll, if eligible, in a health and/or dental plan during the next annual open enrollment period.

5.7.5-7 If an employee loses alternate coverage, the employee may enroll in a City health and/or dental plan outside of the open enrollment period. To be eligible the employee must provide verification that alternate coverage has been lost.

2010 CITY OF SAN JOSE – OE#3 NEGOTIATIONS

5.7.57.1 Health Insurance. To enroll in a City health insurance plan following loss of alternate coverage, the employee must pay all unpaid premiums (City and employee contributions) and refund any excess in-lieu-payments required to make the coverage effective on the date when alternate coverage ceased. Re-enrollment in the plan shall be in accordance with the carriers' enrollment procedures.

5.7.57.2 Dental Insurance. Enrollment in a City dental insurance plan following loss of alternate coverage will become effective the first of the month following payment of two (2) dental premiums through the City's payroll process. Re-enrollment in the dental insurance plan shall not be retroactive.

2010 CITY OF SAN JOSE – OE#3 NEGOTIATIONS

CITY PROPOSAL #10- ELIGIBILITY OF OVERTIME

Proposed Language

- 6.6 A full-time employee authorized or required to work overtime who works in excess of eight (8) hours per day or, ten (10) hours per day if assigned to a schedule of ten (10) hours per day four (4) days per week, or twelve (12) hours per day if assigned to a 12-hour shift at the Water Pollution Control Plant or in excess of 40 hours per workweek shall be compensated at the rate of 1.5 the employee's hourly rate, except when such excess hours result from a change in such employee's workweek or shift or from the requirement that such employee fulfill the employee's workweek requirement.

2010 CITY OF SAN JOSE – OE#3 NEGOTIATIONS

CITY PROPOSAL #17 AND 18- RETIREMENT COST MITIGATION

Proposed Language

ARTICLE 9 FULL UNDERSTANDING, MODIFICATION AND WAIVER

- 9.1 This Agreement sets forth the full and entire understanding of the parties regarding the matters set forth herein, and any and all prior or existing Memorandums of Agreement, understandings and agreements, whether formal or informal, are hereby superseded and terminated in their entirety.
- 9.2 Existing benefits provided by ordinance or resolution of the City Council or as provided in the San Jose Municipal Code and which are referenced in the Agreement shall be provided in accordance with the terms of the Agreement.
- 9.3 It is the intent of the parties that ordinances, resolutions, rules and regulations enacted pursuant to this Memorandum of Agreement be administered and observed in good faith.
- 9.4 Although nothing in this Agreement shall preclude the parties from mutually agreeing to meet and confer on any subject within the scope of representation during the term of this Agreement, it is understood and agreed that neither party may require the other party to meet and confer on any subject matter covered herein or with respect to any other matter within the scope of representation during the term of this Agreement.

~~9.5 Notwithstanding the provisions of Article 9.4, between January 15, 2008 and January 31, 2008, each party may notify the other in writing of its desire to reopen this agreement on a single item. An item shall be defined as one subject within an Article in the MOA (for example, a party could reopen the across-the-board wage increase for 2008, but no other provision of the Article on Wages and Special Pay). Upon such notice being given, the duly authorized representatives of the parties shall meet and confer with respect to the item selected by each party. All provisions of this Agreement shall remain in full force and effect during any reopening and the reopened provisions may be modified only through mutual agreement of the parties. If no agreement is reached by March 15, 2008, the reopened provisions shall remain unchanged and in effect through the term of this agreement.~~

9.5 Retirement Benefits Reopener

9.5.1 Notwithstanding any other provision of this Agreement, the parties agree to commence meeting and conferring within fifteen (15) calendar days of the City providing written notice to OE#3 on retiree healthcare benefits for future employees, a medical reimbursement program for future retirees, and pension benefit/costs for current and future employees.

9.5.2 The parties intend to engage in the foregoing negotiations in a coalition bargaining process with all other interested represented bargaining units, if any. However, negotiations between the City and Employee Organization shall commence no later than fifteen (15) calendar days after the City provides written notice to OE#3, with or without the participation of any other bargaining unit.

2010 CITY OF SAN JOSE – OE#3 NEGOTIATIONS

The City and Employee Organization shall negotiate in good faith in an effort to reach a mutual agreement.

- 9.5.3 If no agreement is reached, the parties will follow the impasse procedures set forth in the City of San Jose's Employer-Employee Relations Resolution (#39367) and the Meyers-Milias-Brown Act. The parties understand that this means that, notwithstanding any other provision of this agreement, the City will have the right to unilaterally implement in the event that no agreement is reached at the conclusion of negotiations and mandatory impasse procedures.

CITY PROPOSAL #15- SICK LEAVE PAYOFF

Proposed Language

18.2 Sick leave payoff shall be given to each full-time employee at the time of retirement directly from City service or death under one of the following conditions:

18.2.1 Federated Retirement Plan. The employee is: a) a member of the Federated Retirement Plan, and; b) retired under the provisions cited in the plan, and; c) credited with at least 15 years of service in this retirement plan, or; d) credited with at least 10 years of service prior to a disability retirement.

~~18.2.2 Separated Employee with Vesting Rights. The employee has: a) separated from service with the City and has not been terminated for cause as defined by San Jose Municipal Code Section 3.04.1370 and; b) retained vesting rights in a retirement system according to provisions in the SJMC, and; c) following such separation, qualifies for retirement and retires under the provisions cited in the code, and; d) has at the time of retirement credit for at least 15 years of service in the applicable retirement plan.~~

18.2.3 Death During Service. The estate of any full-time employee who dies while in City service and prior to retirement, even though the employee is not credited with at least 15 years of service in any applicable retirement plan.

~~18.2.4 Death of Separated Employee. The estate of any full-time employee who: a) has separated from service with the City and has not been terminated for cause as defined by San Jose Municipal Code Section 3.04.1370 but had retained vesting rights in a retirement system according to provisions in the SJMC, and; b) dies prior to becoming eligible for retirement allowances as cited under provisions of the SJMC, and; c) has at the time of death credit for at least 15 years of service in the applicable retirement plan.~~

18.3 Payout shall be determined as follows.

18.3.1 If a full-time employee at the time of retirement or death has earned, unused sick leave hours, the employee shall be paid the equivalent of a specified percent of their hourly rate of pay at the time of retirement, termination or death, whichever comes first, multiplied by the total number of accumulated and unused hours of sick leave as of the date of retirement or death in accordance with 18.3.2.

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| 18.3.2 Less than 400 hours - | Hours accumulated x 50% of final hourly rate; |
| or 400 - 799 hours - | Hours accumulated x 60% of final hourly rate; |
| or 800 - 1200 hours - | Hours accumulated x 75% of final hourly rate. |

18.3.3 Distribution of payouts to eligible employees, in accordance with 18.3.1 above, who retire before June 27, 2010, shall be made no later than February 1, 2011.

18.4 Effective June 27, 2010, payout shall be determined as follows: If a full-time employee at the time of retirement or death has earned, unused sick leave hours, the employee shall be paid the equivalent of a specified percent of their hourly rate of pay at the time of retirement, or death, whichever comes first, multiplied by the total number of accumulated and unused hours of sick leave as of the date of retirement or death in accordance with 18.4.1.

2010 CITY OF SAN JOSE – OE#3 NEGOTIATIONS

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|------------------------------|---|
| 18.4.1 Less than 400 hours - | Hours accumulated x 50% of final hourly rate; |
| or 400 - 1200 hours - | Hours accumulated x 60% of final hourly rate. |

18.5 Employees hired by the City on or after June 27, 2010, if an eligible full-time employee at the time of retirement or death has earned, unused sick leave hours, the employee shall be paid the equivalent of a specified percent of their hourly rate of pay at the time of retirement, or death, whichever comes first, multiplied by the total number of accumulated and unused hours of sick leave as of the date of retirement or death in accordance with 18.5.1.

| | |
|---------------------|---|
| 18.5.1 0-750 hours: | Hours accumulated x 25% of final hourly rate. |
|---------------------|---|

18.4.6 Use of previously accumulated sick leave hours. For purposes of determining the total number of accumulated and unused hours of sick leave of a full-time employee at the time of retirement or death, unused sick leave from prior periods of employment with the City shall be used. However, previously accumulated sick leave shall be credited to the employee for use during an employee's current employment period.

18.7 Employees who separate from City service on or before June 26, 2010, and who have 15 years of service, shall be eligible for a sick leave payout upon retirement at the rate that was available at the time of their separation.

18.8 Employees are only eligible for one sick leave payoff while employed by the City of San Jose, including breaks in employment.

CITY PROPOSAL #22 and 23- DISABILITY LEAVE SUPPLEMENT

Proposed Language

ARTICLE 19 DISABILITY LEAVE

- 19.1 Disability Leave Supplement (DLS). Disability Leave Supplement (DLS) is the benefit provided pursuant to this Article, which, when added to Worker's Compensation Temporary Disability (WCTD) results in providing employees 85% of their regular base salary.
- 19.2 Eligibility for Disability Leave Supplement. A full-time employee who is required to be absent from work due to a job-related injury or industrial illness and who receives WCTD payments pursuant to Division 1 or Division 4 of the California Labor Code is eligible for DLS, excluding ineligible causes listed in section 19.4. In the event an employee is not eligible for WCTD payments because of the statutory waiting period, DLS shall not be paid for such a waiting period. The employee may use sick leave to cover the waiting period. DLS will also be paid for intermittent absences for medical appointments and physical therapy pursuant to the resolution of grievance #624 (2/15/85).
- 19.3 Eligibility for Disability Leave Supplement Linked to Temporary Disability. If the Worker's Compensation Appeals Board of the State of California or any judicial court should determine that the employee is not entitled to Temporary Disability (WCTD) compensation, the employee shall not be entitled to Disability Leave Supplement (DLS) benefits. Under such circumstances, any DLS moneys paid to the employee by the City must be returned to the City within one (1) year.
- 19.4 Ineligible Causes for Disability Leave. An employee shall not be eligible for disability leave, and shall not receive DLS if the injury or illness that causes the absence results from:
- 1) an act of gross negligence of such employee;
 - 2) any work voluntarily undertaken by employee from which the employee has been prohibited from engaging in as determined by a City physician, prior to the date of injury.
- 19.5 Ineligibility if Offer and Decline of Modified Duty. ~~An employee shall be voluntarily separated from City service DLS shall not be provided if the City offers the employee employment temporary modified duty~~ at identical or similar salary, within the employee's medical limitations, and the employee refuses or fails to accept duty for which the employee is physically qualified.
- 19.6 Maximum Term of Disability Leave Supplement. The employee will receive DLS benefits equal to the amount of money which, when added to the WCTD equals 85% of what the employee would have earned at the position from which the employee is disabled for one of the following time periods, whichever is shortest:
- 1) the time the employee is medically required to be absent due to a work-related injury or illness, after the required three day waiting period;
 - 2) the period of time WCTD is payable to the employee under the Workers' Compensation provisions of Division 1 or Division 4 of the Labor Code of the State of California.
 - 3) ~~Nine-Six (69) calendar months (274 days) or 4560-1040~~ hours, if not continually absent following date of injury.

2010 CITY OF SAN JOSE – OE#3 NEGOTIATIONS

- 19.6.1 Time Limit for DLS Eligibility. After ~~4560~~ 1040 hours of DLS, the employee is entitled to no additional compensation for the injury or illness. No employee shall be eligible for DLS five (5) years after the date of the onset of the injury or illness for which the employee is claiming DLS.
- 19.6.2 Suspension of Disability Leave Supplement. The City may suspend Disability Leave Supplement in lieu of or as part of a disciplinary suspension, demotion or pay reduction. The City shall proceed with due process requirement, unless the employee is non-ambulatory and is determined by a physician to be medically unable to participate. An employee who is unable to participate may send a representative in their absence.
- 19.7 Compensation. Employees who receive WCTD and DLS compensation do not receive their regular salary. DLS as described in this Article is in lieu of regular compensation.
- 19.8 Requirement of Evidence Proving Temporary Disability. The Director of Human Resources or designee, is responsible for determining eligibility for DLS. In making this determination, the Director or designee, may require the employee to provide proof of injury or illness, proof that the injury or illness was job related, proof of the disability and how long the injury or illness will last, and proof of other relevant matters as determined by the Director or designee. The Director or designee, may require the employee to submit to a medical examination by a physician selected by the City.
- 19.9 Termination of Disability Leave. An employee who is unable to return to full time regular duty following the expiration of any and all leave provided in this article and the integration of Sick Leave, accrued vacation, and compensatory time off with Workers' Compensation provided for in Article 18.1.2.3 may be considered to have voluntarily separated from employment.

2010 CITY OF SAN JOSE – OE#3 NEGOTIATIONS

CITY PROPOSAL #26- ADDITIONAL 5% TOTAL COMPENSATION REDUCTION (ONE-TIME)

ARTICLE 5 WAGES AND SPECIAL PAY

5.1.2 ADDITIONAL RETIREMENT CONTRIBUTION

Effective June 27, 2010 through June 28, 2011, all employees will make an additional retirement contribution in the amount of 7.5% of pensionable compensation, and the amounts so contributed will be applied to reduce the contributions that the City would otherwise be required to make during that time period for the pension unfunded liability, which includes the current service deficiency and prior service deficiency for basic retirement benefits and current service deficiency and prior service deficiency for the cost-of-living (COL) retirement benefit. This additional employee retirement contribution would be in addition to the employee retirement contribution rates that have been approved by the Federated City Employees' Retirement System Board. The intent of this additional retirement contribution by employees is to reduce the City's required pension retirement contribution rate by a commensurate 7.5% of pensionable compensation, as illustrated below:

| Federated (Fiscal Year 2010-2011) | | | |
|--|-------------|-----------------|--------------|
| | City | Employee | Total |
| Current Contribution Rates | 29.59% | 10.30% | 39.89% |
| Contribution Rates With Additional Employee Contributions | 22.09% | 17.80% | 39.89% |

Note: Additional contributions made by employees do not affect the retiree healthcare rates.

These contributions shall be treated in the same manner as any other employee contributions. Accordingly, the intent of these additional payments will be made on a pre-tax basis through payroll deductions pursuant to IRS Code Section 414(h)(2) and will be subject to withdrawal, return and redeposit in the same manner as any other employee contributions.

In the event that the additional employee contributions are not implemented by June 27, 2010, the additional employee contribution will increase to make up for the missed contributions. For each pay period commencing after June 27, 2010, in which the additional employee contribution rate is not increased, the additional dollar amount that would have been contributed had the increased rate been implemented on June 27, 2010, will be divided by the number of missed pay periods and that amount will be collected over the same number of pay periods after the increased rate has been implemented.

For example, if the additional contributions do not begin until August 22, 2010 (pay period #18) the employee contributions for each of the subsequent four (4) pay periods would include both the contribution for the current pay period and a contribution for one (1) missed pay period.

The parties understand that in order to implement this provision, an amendment must be made to the Federated City Employees' Retirement System that requires an ordinance amending the San Jose Municipal

2010 CITY OF SAN JOSE – OE#3 NEGOTIATIONS

Code. In addition, the parties understand that the City will request that the Federated City Employees' Retirement System Board have its actuary confirm that an increase of the employee contribution of 7.5% will reduce the City's contribution rate by 7.5%.

In the event that these additional employee retirement contributions are not implemented for any reason by September 1, 2010, or are ceased for any reason thereafter, or the Federated City Employees' Retirement System Board's actuary confirms that the City's contribution rate could not be reduced by the same 7.5%, no additional employee contributions shall be required and the equivalent amount of 5% of total compensation would be taken as a temporary base pay reduction with retroactive deductions taken as described above.

Part-time employees not in the City's retirement system will receive a 5.8% base pay reduction effective June 27, 2010 through June 28, 2011.